

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BERNARD STEVENS-BEY and
DAVID L. WELLS,

Plaintiffs,

CASE NO: 2:06-CV-10508

V.

DISTRICT JUDGE DENISE PAGE HOOD
MAGISTRATE JUDGE STEVEN D. PEPE

PATRICIA CARUSO and
HUGH WOLFENBARGER,
in their individual capacities,

Defendants.

**ORDER DENYING
DEFENDANTS' MOTION TO COMPEL ACCESS TO PLAINTIFF WELLS' MEDICAL
RECORDS AS MOOT (DKT. #14).**

I. INTRODUCTION

Plaintiffs Bernard Stevens-Bey and Plaintiff David L. Wells are prisoners in custody of the Michigan Department of Corrections (MDOC). On February 7, 2006, they filed this action under 42 U.S.C. § 1983 against Patricia Caruso and Hugh Wolfenbarger, in their individual capacities (Plaintiffs' Complaint, Dkt# 1). Ms. Caruso is the Director of the MDOC and Mr. Wolfenbarger is the Macomb County Correctional Facility (MRF) Warden (Defendants' Motion for Summary Judgment, Dkt. #15-1, p. 1). Plaintiffs state that they are non-smokers suffering from serious medical conditions associated with breathing (Plaintiffs' First Amended Complaint, Dkt. #4, p. 3), and that Defendants have failed to protect Plaintiffs from involuntary exposure to environmental tobacco smoke (ETS), in violation of the Eighth Amendment. They seek declaratory and injunctive relief, as well as an unspecified amount of monetary damages, for

present and future injury (Dkt. #4, p. 2). Plaintiffs also make a state law claim under the Michigan Clean Indoor Air Act, MCL §§ 33.12601, *et seq.*, which requires certain measures to minimize the effect of indoor smoke.

All non-dispositive pre-trial matters were initially referred to Magistrate Judge Wallace Capel, Jr. for hearing and determination under 29 U.S.C. § 636(b)(1)(A), (Dkt. #2). This has been modified with such references being transferred to the undersigned (Dkt. #23).

On September 12, 2006, Defendants filed a Motion to Compel Access to Plaintiff Wells' Medical Records (Dkt. # 14-1). Defendants claim in their motion that they sent a routine "Authorization to Release Medical Records" form to Plaintiff on June 23, 2006, and August 18, 2006. By signing the form, Plaintiff would authorize the MDOC to release all information maintained by the MDOC regarding Plaintiff's "past or present physical, mental, dental, or other condition" to Defendants' counsel. Plaintiff would also waive any doctor-patient privilege resulting from any consultation, examination or treatment, rendered by MDOC employees, contractors, or medical personnel who treated Plaintiff Wells while he was under the jurisdiction of the MDOC (Dkt. #14-3). After Defendants filed their Motion to Compel Access to Plaintiff Wells' Medical Records, however, Plaintiff sent a letter to the Court (filed on September 25, 2006), attaching a signed copy of the requested release authorization.

This letter represents a stipulation to Defendant's Motion to Compel Access to Plaintiff Wells's Medical Records.

Plaintiff Wells hereby consents to Defendants' request for medical records between the dates of 2-1-04 and 6-30-05 as indicated by the attached Patient's Authorization for Disclosure of Health records which was signed and sent to counsel of record for the Defendants. Furthermore, attached thereto is a copy of the medical records in his possession regarding the above referenced civil action, consisting of 37 pages.

By copy of this letter, Plaintiff Wells asks that the motion to compel be withdrawn or indicate the acceptance of his stipulation.

(Dkt. #18.) Defendants did not subsequently file any acceptance of this stipulation, nor did they withdraw their motion. Yet, because Defendants have received the release authorization that they requested of Mr. Wells, the Defendant's Motion to Compel Access to Medical Records is **DENIED AS MOOT**. The parties to this action may object to this order within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a) and E.D. Mich. LR 72.1(d).

SO ORDERED.

Date: February 23, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Diane M. Smtih, Esq., and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Bernard Stevens #166360, Saginaw Correctional Facility, 9625 Pierce Rd., Freeland, MI 48623, David Wells #125291, Macomb Regional Facility, 34625 26 Mile Rd., New Haven, MI 48048

s/ James P. Peltier
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